Supreme Court of the United States

OCTOBER TERM, 1902.

No. 493.

JACKSON W. GILES, APPELLANT,

vs.

E. JEFF. HARRIS ET AL., BOARD OF REGISTRARS OF MONTGOMERY COUNTY, ALABAMA, APPELLEES.

SUPPLEMENTAL AND REPLY BRIEF FOR APPELLANT.

MOTION TO DISMISS APPEAL.

Replying to the motion of appellees to dismiss this appeal, the appellant comes and says that the motion should be denied, and in support of his contention submits the following points of argument:

I.

The sole object of this suit is to have the suffrage provisions of the constitution of Alabama declared null and void

because repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States, and to compel the board of registrars to register appellant and grant him a certificate of qualification as an elector, the same as granted to white men, because such registration and certificate had been refused him for no other reason than his race and color and previous condition of servitude, and because such refusal deprived him of the right to vote and the equal protection of the law on account of his race and color.

The right to vote at the election in November, 1902, was not sought to be secured by this action, but the fact that appellant would be deprived of the right to vote at that election was alleged to show the immediate effect of the refusal of the board of registrars to register appellant and grant him a certificate. It was also deducible from the allegations of the bill that if appellant should be unable to qualify under what is known as the permanent plan, which it is pretended will be carried into operation after the first day of January, 1903, or if said permanent plan were never put in effect, that he would be permanently deprived of the right to vote in the State of Alabama by reason of the action of said board.

II.

The board of registrars of Montgomery county is a quasi-judicial office created by the constitution of Alabama, to which is committed the administration of the law on suffrage and elections, and the judgment and decrees of this court will be binding on that board irrespective of the per-

sons in office. Subdivision six (6) of article 186 of the constitution of Alabama (Record, page 7) provides that "in case of appeal to the supreme court, final judgment in favor of the petitioner shall entitle him to registration as of the date of his application to the registrars," which clearly implies that the board of registrars, as an official body or court, will enforce the judgments and decrees that may be rendered against it irrespective of the persons that may have been in office at the time the application was made for registration. This also appears from subdivision one (1) of article 186 of the constitution (Record, page 5) in providing that "if a vacancy or vacancies occur in the membership of the board of registrars from any cause, the governor, auditor and commissioner of agriculture and industries, or a majority of them, acting as a board of appointment, shall make other appointments to fill such board."

III.

It nowhere appears from the record or from any other evidence that appellees are no longer members of the board of registrars of Montgomery county, Alabama, or that the office of board of registrars has ceased to exist under the constitution of Alabama. On the contrary, it is clearly to be seen from a careful reading of section 186 and subsequent sections that no limit is placed upon the term of a member of this board, and that the board is a permanent office under the constitution.

The fact that it is called upon to administer the tempo rary plan, which ceases to operate after the 1st day of Janu-

ary, 1903, is likely to mislead one to the conclusion that the board of registrars also goes out of office with the temporary plan; but this view is not upheld by the language of the law. If the functions and powers of the board are to cease with the temporary plan, then why is it provided in section 187 of the constitution (Record, page 7) that "The board of registrars in each county shall on or before the first day of February, 1903, *or as soon thereafter as practicable*, file in the office of the judge of probate in their county a complete list, sworn to by them, of all persons registered in their county," etc.?

The idea that the board of registrars is a fixed and permanent body under the constitution is also borne out by the following provision in the latter part of section 187 (Record, page 7), to wit: "Unless he shall become disqualified under the provisions of this article, any one who shall register prior to the first day of January, 1903, shall remain an elector during life, and shall not be required to register again unless he changes his residence, in which event he may register again on production of his certificate." Also the following provision: "The certificate of the registrars, or of the judge of probate, or of the secretary of state, shall be sufficient evidence to establish the fact of such life registration."

It would seem from section 190 of article 8 of the constitution of Alabama, which is not in the record, but of which the court will take judicial notice, that the legislature is not even given the power to do away with or interfere with the present board of registrars, nor to create a new or different board. That section contains the following provision: "The

legislature shall pass laws not inconsistent with this constitution, to regulate and govern elections; and shall provide general registration laws not inconsistent with the provisions of this article, for the registration of all qualified electors, after the first day of January, 1903."

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Counsel for Appellant.